



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,613	05/29/2007	Marc Peuker	59109US004	7832
32692	7590	09/19/2008		
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427				
EXAMINER				
PAGAN, JENNIFER MARIE				
ART UNIT		PAPER NUMBER		
3728				
NOTIFICATION DATE		DELIVERY MODE		
09/19/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

LegalUSDocketing@mmm.com
LegalDocketing@mmm.com

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-10, 20-26, drawn to mixing capsule with by-pass means.

Group II, claim(s) 11-19, drawn to storing capsule with hardenable sealing means.

2. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The prior art has been identified as document WO 00/23002 A (DENTSPLY INT INC) and discloses:

- a capsule for storage and mixing and dispensing of material comprising:
- a capsule body member (10) providing a main chamber (8), and comprising a dispensing opening (13);
- an applicator member (20) being slidably accommodated in said capsule body member, said applicator member (20) providing an auxiliary chamber (50); and an activator member (40) being slidably accommodated in said applicator member; said

main chamber and said auxiliary chamber being selectively connectable for fluid communication between said chambers upon activation of said capsule by said activator member (see page 7 lines 2-4 and figure 1)

It follows that the following technical features make a contribution over the prior art and can be considered as special technical features within the meaning of Rule 13.2 PCT:

Claim 1: through-hole extending from the auxiliary chamber to the outer surface of the applicator member and a recessed area in the inner wall of the capsule.

Claim 11: internal channel system extending from the rear end of the activator member to an annular groove remote from the rear end of said activator member.

The problem solved by these special technical features can therefore be construed as:

Invention I: Providing a capsule for storing, mixing and dispensing material having an alternative way to mix the two components.

Invention II: Hermetically sealing a capsule after it has been filled in with components.

The identified special technical features are not the same and do not correspond as they solve different problems. Consequently, this authority considers that the separate inventions or groups of inventions mentioned above are not so linked as to form a single general inventive concept.

3. A telephone call was made to Peter Olsen on 9/12/2008 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENINE M. PAGAN whose telephone number is

(571)270-3216. The examiner can normally be reached on Monday - Thursday, 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Gregory Pickett/
Primary Examiner, Art Unit 3728

/Jenine M Pagan/
Examiner, Art Unit 3728

/J. M. P. /
Examiner, Art Unit 3728